



SF 446 – Asset Forfeiture (LSB2284SV)

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Fiscal Note Version – New

Description

[Senate File 446](#) relates to asset forfeiture and includes a prohibition on civil asset forfeiture for property valued at less than a minimum amount, increases the standard of proof required for asset forfeiture to clear and convincing evidence, prohibits the transfer of seized property to the federal government under a minimum amount, requires a proportionality review with regard to property to be forfeited, and requires law enforcement agencies to retain certain records related to asset forfeiture.

Background

Asset forfeiture is a process by which contraband and proceeds or instrumentalities related to criminal activity may be seized by the State and sold. Under current law, conduct giving rise to forfeiture is an act or omission which is a public offense that is a serious or aggravated misdemeanor or felony. However, forfeiture proceedings are not precluded if the State fails to convict, indict, or charge the person whose conduct gave rise to forfeiture. Under this Bill, asset forfeiture for property valued at less than \$15,000 would be prohibited unless the conduct giving rise to forfeiture resulted in a conviction, or one of the other exceptions related to the property owner have been met.

In FY 2016, there were 822 cases of cash forfeiture under State law for a total of \$2.6 million. Individually, none of the cases were above \$15,000, and eight cases were between \$5,000 and \$15,000. The average value of a cash forfeiture was \$3,217. The following table shows the cash forfeitures under State law from the last five calendar years and the average value of a cash forfeiture case each year.

CY 2012-2016 Cash Forfeitures (under State law)

Year	Total Amount Seized	Amount of Forfeitures	Average Value of Forfeiture
2012	\$2,864,915	787	\$3,960
2013	\$4,035,221	1006	\$4,011
2014	\$4,673,752	908	\$5,147
2015	\$2,664,526	711	\$3,748
2016	\$2,494,511	728	\$3,427

It is important to note that the proceeds from the sale of forfeited real or personal property (e.g., vehicles) are not included in the previous table. The values of real estate forfeited and sold in calendar years 2012 through 2016 were as follows: \$2,000, \$40,000, \$8,100, \$1,250, \$52,000, and \$119,000.

Under Iowa Code section [809A.17](#), the net proceeds of the forfeited property may be divided among the Department of Justice (DOJ) and any State or local law enforcement agencies that

participate in the investigation or prosecution resulting in the forfeiture. If the forfeited property is cash or proceeds from the sale of real property, the DOJ may retain up to 10.0%, and the balance is distributed to the seizing agency for use or divided among law enforcement agencies and county attorneys pursuant to any agreement entered into by the seizing agency. Forfeited property which is not used by the DOJ in the enforcement of the law may be requisitioned by the Department of Public Safety (DPS) or any law enforcement agency within the State for use in enforcing the criminal laws of the State.

Assumptions

- The amount of cash seized and proceeds from the sale of real property will remain consistent in future fiscal years.
- The average value of cash forfeitures will remain consistent in future fiscal years.

Fiscal Impact

Senate File 446 will likely have a fiscal impact on all agencies that retain a portion of the proceeds from forfeiture, such as the DOJ, local law enforcement, and county attorneys. Since all of the cash forfeitures from 2012 through 2016 were below the minimum amount established in this Bill, all of these cases of forfeiture would require a conviction. As a result, there would likely be fewer cash forfeitures and forfeiture proceeds retained by the DOJ and law enforcement agencies, although an estimate is indeterminable at this time. The increased burden of proof for forfeiture proceedings may also result in fewer cases filed and a reduction in the number of forfeiture orders issued.

Sources

Legislative Services Agency, Fiscal Services Division
Department of Justice
Iowa County Attorneys Association

/s/ Holly M. Lyons

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The fiscal note for this Bill was prepared pursuant to Joint Rule 17 and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.
